(1)

Supreme Court, U.S.
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OFFICE OF THE CLERK

No.

In The

Supreme Court of the United States

October Term 1995

JOHN LUCILLE,

Petitioner,

v.

THE CITY OF CHICAGO, et al.

Respondents.

On Petition For A Writ of Certiorari To The
United States Court of Appeals
For The Seventh Circuit.

PETITION FOR WRIT OF CERTIORARI

John Lucille, *Pro se*
2741 W. Warren Blvd.
Chicago, IL 60612
(312) 826-6518

59 pp

Questions Presented For Review

I. Whether Petitioner has a common law, statutory, or constitutional right to "back-up" tapes of court proceedings where demanded and an incomplete or inaccurate record is alleged in the lower courts below.

II. Whether the lower courts erred in denying Petitioner judicial records in the form of "back-up" tapes held by court clerks, court stenographers, or other personnel where tapes are demanded and an incomplete and inaccurate record is alleged.

III. Whether or not Petitioner and others similarly situated under the *Shakman* consent decree are being denied due process of law and equal protection of the laws by the City of Chicago under the Constitutions of the State of Illinois and the United States of America.

IV. Whether the Seventh Circuit erred in extending *Kokonnen v. Guardian Life Insurance Co.* in a *Shakman* claim by holding that a district court does not have jurisdiction to set aside a final judgment order unless the court expressly retains jurisdiction where Petitioner seeks to set aside a settlement agreement unlawfully attained.

TABLE OF CONTENTS

	Page
Questions Presented For Review	i.
Table of Contents	ii.
Table of Authorities	iii.
Jurisdictional Statement	1.
Constitutional and Statutory Provisions Involved	2.
Statement of the Case	4.
Reasons for Granting the Writ	8.
Conclusion	12.

INDEX TO APPENDICES

Appendix A	Opinion of the United States Court of Appeals for the Seventh Circuit, No. 95-2109, The Honorable William J. Bauer, presiding, (Issued August 28, 1995)	13.

INDEX TO APPENDICIES

	Page
Order, *Lucille v. City of Chicago*, Bauer presiding, ...	13
Federal Rules of Civil Procedure 60(b)	14
Civil Docket Sheet, *Lucille, John et al. v. City of Chicago* 85 C 5956 (N.D.Ill.E.D.1985) p. 7	16
Transcript of Proceedings, Coversheet, *Lucille, John et al. v. City of Chicago* 85 C 5956 (N.D.Ill.E.D.1985) December 4, 1989, ...	17
Final Judgment Order, *Lucille, John et al. v. City of Chicago* 85 C 5956 (N.D.Ill.E.D.1985)	18
Civil Docket Sheet, *Lucille, John et al. v. City of Chicago* 85 C 5956 (N.D.Ill.E.D.1985) p. 8	21
Plaintiff's Preliminary Reply to Petition to Enforce Settlement Agreement, *Lucille, John et al. v. City of Chicago* 85 C 5956 (N.D.Ill.E.D.1985)	22
Plaintiff's Notice to Strike and Dismiss - Motion In Limine, *Lucille, John et al. v. City of Chicago* 85 C 5956 (N.D.Ill.E.D.1985)	25

INDEX TO APPENDICIES (cont.)

Plaintiff's Certified Affidavit re: Death of Arnett, Gordon James, of Chicago, Illinois, U.S. Supreme Court Bar Member (9/9/93) 27

Transcript of Proceedings, Coversheet, *Lucille, John et al. v. City of Chicago* 85 C 5956 (N.D.Ill.E.D.1985) January 11, 1990, ... 28

Minute Order of 4/27/95, *Lucille, John et al. v. City of Chicago* 85 C 5956 (N.D.Ill.E.D.1985) the Honorable John A. Nordberg, presiding 29

Transcript of Proceedings, Coversheet, *Wzorek, Eugene v. City of Chicago* 84 C 9978 (N.D.Ill.E.D.1984) July 23, 1992, ... 30

Civil Docket Sheet, *Wzorek, Eugene v. City of Chicago* 84 C 9978 (N.D.Ill.E.D.1984) p. 15 , line 207 32

General Order, *Shakman v. The Democratic Organization of Cook County*, 69 C 2145 (N.D.Ill.E.D.1984) 33

INDEX TO APPENDICIES (cont.)

Complaint, Coversheet, *Allen et al. v. City of Chicago*, 92 C 4122 (N.D.Ill.E.D.1992), the Honorable Marvin E. Aspen, Judge, presiding 35

Minute Order, *Coclanes v. Sagun et al.*, 94 C 3323 (N.D.Ill.E.D.1994) 36

News Article, *Chicago Daily Law Bulletin*, (October, 1995) 37

Letter from Clerk of Court, U.S. District Court, Northern District of Illinois, re: *Wzorek v. City of Chicago*, 84 C 9978 (N.D.Ill.E.D. 1984) 38

Unsigned Letter from Clerk, U.S. Supreme Court Denial of Writ of Mandamus 40

Order, *Lucille v. City of Chicago*, August 25, 1994 Judge Nordberg presiding, ... 41

Order, *Lucille v. City of Chicago*, No. 95-2109 (7th Cir. 1995), Cudahy, Flaum, Easterbrook presiding, ... 48.

Order, *Lucille v. City of Chicago*, No. 95-2109 (7th Cir. 1995), Cudahy, Flaum, Easterbrook presiding, ... 51

TABLE OF AUTHORITIES

Cases

Page

Allen v. City of Chicago, 92 C 4122 (N.D.Ill.1992) 12
Bishop v. Wood, 426 U.S. 341 (1976) 8
Boddie v. Connecticut, 401 U.S. 371 (1971) 11
Coclanes v. Sagun, No. 95 C 2269 (N.D.Ill. 1995) 12
Copley Press v. Administrative Office of the Illinois Courts, 271 Ill.App.3d 548 (2d Dist. 1995) .. 10
Fontano v. City of Chicago, 86 C 1294 (7th Cir. 1987) . 8
Harold Washington Party v. Cook County, Ill. Democratic Party, 984 F.2d 875 (7th Cir. 1993) 10
In re the application of CBS, Inc. v. Edwards, 672 F.2d 1289 (7th Cir. 1982) 10
Jones v. Franzen, 697 F.2d 801 (7th Cir. 1983) 11
Kokkonen v. Guardian Life Ins. Co., 114 S.Ct. 1673 (1994) 9
LaFollette v. Savage, 63 F.3d 540 (7th Cir. 1995) 10
Lucille v. City of Chicago, 31 F.3d 546 (7th Cir. 1994) 9
Margoles v. Johns, 798 F.2d 1069 (7th Cir. 1986) 10
McCall-Bey v. Franzen, 777 F.2d 1178 (7th Cir. 1985) .. 9
McCray v. Maryland, 456 F.2d 1 (4th Cir. 1972) 11
Navarette v. Enomoto, 536 F.2d 277 (9th Cir. 1976) 11

Nixon v. Warner Communications, Inc., 435 U.S. 589 (1978) 9
Ryland v. Shapiro, 708 F.2d 967 (5th Cir. 1983) 11
Shakman v. Democratic Organization of Cook County, 481 F.Supp. 1315 (N.D.Ill. 1979) ... 8
Smith v. City of Chicago, No. 84-2858 (7th Cir. 1985) . 11
U.S. v. Berry, No. 94-3717 (7th Cir. 1995) 9
U.S. v. L. Shannon, 540 F.Supp. 769 (1982) 10
U.S. v. Peters, 754 F.2d 753 (7th Cir. 1985) 9
U.S. v. Sababu, 891 F.2d 1308 (1989) 9
Wzorek v. City of Chicago, No. 84 C 9978 (N.D.Ill.E.D. 1984) 10

Constitutional Provisions

U.S. Const. 10
U.S.C. Title 28, Section 1254(1) 2
Ill. Const. 2

Jurisdictional Statement

Petitioner appeals pursuant to United States Supreme Court Rule 10 and related federal statutory and constitutional provisions. The United States District Court had jurisdiction to hear this cause under 28 U.S.C. Section 1331 and Fed.R.Civ. P. 60(b). The Seventh Circuit Court of Appeals had jurisdiction of the appeal pursuant to 28 U.S.C. Section 1291. Petitioner filed a Petition for Writ of Mandamus to the Seventh Circuit Court of Appeals before this Court for the tapes alone docketed as case No. 95-678, October Term, 1995 on October 26, 1995. While that original cause was pending before this Court, in total disregard of this Court's opinion concerning the issue before it, the Seventh Circuit Court of Appeals dismissed Petitioner's pending appeal before that court after only 9 days of Petitioner having filed his reply brief therein. The Seventh Circuit then sent Petitioner a bill of costs for the City of Chicago in the amount of $86.40 while Petitioner's Writ of Mandamus was pending before this Court. On January 12, 1996, four days after the government was open for one day in the last thirty, and during furious blizzards, Petitioner received an "unsigned" letter allegedly from this Court's Clerk's office informing him that his petition for writ of mandamus was denied. This Court has jurisdiction to hear this appeal under 28 U.S.C. Section 1254(1), to review this Petition for Writ of Certiorari filed within 90 (ninety) days of the Order entered November 15, 1995 denying Petitioner's petition for rehearing *en banc* by the Seventh Circuit Court of Appeals.

Constitutional and Statutory Provisions Involved

ARTICLE I. SECTION 2 to the Illinois Constitution

No person shall be deprived of life, liberty or property without due process of law nor be denied the equal protection of the laws.

AMENDMENT XIV Sect. 1 to the United States Constitution

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 U.S.C. Section 1254(1)

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

Constitutional and Statutory Provisions Involved

AMENDMENT I to the United States Constitution

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of greivances.

FED. R. CIV. P. 60(b)

See Appendix at 12.

Statement of the Case

Pro se petitioner appeals orders of the Seventh Circuit denying his claims for pay and benefits denied while employed by City of Chicago. Lucille was a 23 year employee of the City of Chicago when fired for political reasons on July 5, 1984.

The *Shakman* decree, entered in 1972 and modified several times since, seeks to control and limit the use and effects of political patronage in the City's employment practices. According to the Seventh Circuit, under *Shakman*, the district sitting to enforce its decree, plays the role of both agency, and court. The court is civil service commission, mediator, and adjudicator all at once. A violation of the judicial decree is contempt of court. The source of the right is both state contract and federal law. The contempt of court remedy is part of the common law power of the courts.

In December of 1989, Lucille and the City entered into settlement negotiations where pay and benefits were discussed. On January 18, 1990, a final judgment order was entered against Lucille, drafted by Lucille's former attorney, Steven Sosman, then an attorney for City of Chicago, without Lucille's knowledge which deleted the "and benefits" portion of settlement negotiations with the City.

Throughout the course of further proceedings, by various demands, motions, and extraordinary writs, Petitioner has sought the production of "back-up" tapes which would show that court transcripts, court dockets and court orders

are incomplete and inaccurate to the damage of petitioner and others similarly situated.

The "back-up" tapes are evidence to show that petitioner is entitled to more employee benefits than he has received. The "back-up" tapes support the fact that the settlement agreement was not "signed by both parties" as stated in district court judge Nordberg's opinion dated August 25, 1994. It is perilous to maintain that a federal court cannot hear or enforce its own orders where the 60(b) Rule itself states the rule does not limit the power of the court to entertain an independent action to relieve a party from a judgment...or to set aside a judgment for fraud upon the court. The argument that the court just doesn't have the power to do good is contrary to God's law as well as common sense. If a court has a conflict of interest in seeing a dispute resolved a certain way, then that court is more likely to fail to see overreaching by a party when an agreement is allegedly reached and not carried out. Under *Shakman*, district court judges acting as "civil service commissioners," and "agency" have apparently fallen into the untenable position of having to hear disputes over "deals" that they have helped put together for the parties.

The Seventh Circuit considered only whether the City violated the settlement agreement allegedly "set out" in the January 18, 1990 order, holding that "violation of settlement terms not incorporated in the judgment did not activate the Court's 'ancillary' jurisdiction." Neither the

District Court nor the Seventh Circuit Court of Appeals have addressed the issues of the inconsistent judicial record raised by Petitioner. In the Seventh Circuit opinion dated October 13, 1995, the appellate court states that the only question before it is whether the district court abused its discretion under 60(b). The question then arises, how does a court abuse its discretion under 60(b)? Is setting aside a fraudulent judgment beyond the one year statute an unlawful "abuse of discretion?" Is the Seventh Circuit saying that the district court and the appellate court are powerless to entertain a fraud claim under the *Shakman* consent decree should the City of Chicago repeatedly fail to live up to its settlement promises in a timely manner? If City of Chicago coincidently fails to pay Lucille in the normal course of business and only petitioner receives his pay late, does Lucille have to file a whole new claim in the courts under *Shakman*? Is he barred from bringing a fraud claim?, or can he go before the district judge familiar with his case even though his final judgment order mentions nothing about timely pay provisions? Under Illinois state law, are not contract agreements construed more strictly against those who draft the documents? Did not counsel for City of Chicago, (a former attorney of petitioner with a conflict of interest of acting as counsel on both sides of a case under state ethics laws,) draft the agreement at issue

and receive money for himself to the detriment of petitioner? Does that count for anything? Contrary to Judge Nordberg's opinion, was not the final judgment order unsigned by petitioner Lucille? Are not federal courts able to hear state law claims under pendent jursdiction, and does not Illinois have five and ten year statutes of limitations for oral and written contracts? Is it not the district court's duty to find and apply the applicable law which will punish fraud and not reward it?

There are many litigants, incarcerated and free, unable to prove court records are incorrect or a product of fraud because courts routinely deny devices which support the truth finding process where no good reason exists to prevent their use, and every reason exists to allow them.

Petitioner respectfully requests that this Court order the lower federal courts to make available to Petitioner and those similarly situated, a complete common law record including "back-up" tapes where demanded and the case be remanded for further testimony and proceedings concerning the alleged final order and any settlement agreement reached prior to entry thereof.

Reasons For Granting Writ of Certiorari

The Writ should be granted in order to promote and protect the common law rights of both litigants and the public in general to inspect and copy judicial records. The lower district court and the Seventh Circuit Court of Appeals have issued opinions in this cause which conflict with other decisions of the Seventh Circuit and established holdings of this Honorable Court concerning jurisdiction of federal courts, access to judicial records, and denial of due process guarantees under the United States Constitution.

Petitioner initially filed a Petition for Rule to Show Cause why City of Chicago should not be held in contempt of the *Shakman* decree, contrary to Judge Nordberg's opinion that a federal civil rights law suit under 42 U.S.C. Section 1983 was originally filed. On May 26, 1986, Judge Nordberg found that Lucille stated a claim for civil contempt under the *Shakman* decree. *Shakman v. Democratic Organization of Cook County*, 481 F. Supp. 1315 (N.D.Ill.1979). In determining whether Lucille had a constitutionally protected property interest in continued employment, this Court would look to state law. *Bishop v. Wood*, 426 U.S. 341 (1976) *Fontano v. City of Chicago*, 86 C 1294 (7th Cir.1987) The Seventh Circuit attempts to turn a federal claim partially based in state law into a mere "settlement of federal litigation.". The Seventh Circuit has taken the broad protection of the *Shakman* consent decree and rendered it meaningless in terms of a

"continuing" vehicle to police unlawful political patronage where each subsequent occurrence of unlawful conduct might constitute a separate and distinct claim under the decree. *Kokkonen v. Guardian Life Ins. Co.*, 114 S.Ct. 1673 (1994) *McCall-Bey v Franzen*, 777 F.2d 1178 (7th Cir. 1985) *Wzorek v. City of Chicago*, No. 84 C 9978 (N.D.Ill.1987) (Duff,J.) This treatment of the decree is critical where a claim may stand or fall depending upon how the judge or counsel words the final judgment order in terms of the settlement agreement. Even more so here, where Petitioner claims that the final judgment order was drafted by opposing counsel without his knowledge. *Lucille v. City of Chicago*, 31 F.3d 546 (7th Cir. 1994).

The Seventh Circuit has held that where evidence of discrepancies between a tape and a transcript are apparent, inquiry should be made as to the prejudicial effect each had upon the trier of fact. *U.S. v. Berry*, No. 94-3717 (7th Cir. Aug. 28, 1995) citing, *U.S. v. Sababu*, 891 F.2d 1308 (1989) The common law right of the public to inspect and copy judicial records is well established. *Nixon v. Warner Communications*, Inc., 435 U.S. 589 (1978) *U.S. v. Peters*, 754 F.2d 753 (7th Cir. 1985) The policy behind the common law presumption of public access to judicial records is that what transpires in the courtroom is public property... and

...while a court may deny access to judicial records, the burden is upon the party seeking to interfere with the common law right to access to demonstrate that justice requires the denial of access. A court may not, however, deny access on the basis of unsupported hypothesis or conjecture. *U.S. v. L. Shannon*, 540 F.Supp. 769 (1982) *In re the application of CBS, Inc. v. Edwards*, 672 F.2d 1289 (7th Cir. 1982). State and Federal courts in Illinois apparently believe they are "above the law" with respect to Freedom of Information Act requests. *Copley Press v. Administrative Office of the Illinois Courts*, 271 Ill. App.3d 548 (2nd Dist. 1995) *Wzorek v. City of Chicago*, No. 84 C 9978 (N.D.Ill.E.D.1984). See Appendix, p. 36

The Seventh Circuit must not be permitted to first deny Petitioner "back-up" tapes and then dismiss his case because the record remains incomplete. *LaFollette v. Savage*, 63 F.3d 540 (7th Cir. 1995). Petitioner has a right under the First Amendment to petition his government for a redress of grievances. Amend. I. Const.. Relief under the extraordinary remedy of Federal Rules of Civil Procedure 60(b) is warranted upon a showing of extraordinary circumstances which create a substantial danger that the underlying judgment was unjust. *Harold Washington Party v. Cook County Ill., Democratic Party*, 984 F.2d 875 (7th Cir. 1993). *Margoles v. Johns*, 798 F.2d 1069 (7th Cir. 1986) The Shakman decree is closely analogous to Title VII

of the Civil Rights Act of 1964. That statute prohibits discrimination in state and local governmental employment on account of religion (among other subjects), *Shakman* adds speech and political affiliation to the list.

The denial of access to courts has created division among the Circuits concerning the showing necessary to establish an interference with the right under the civil rights statutes.. *Boddie v. Connecticut*, 401 U.S. 371 (1971) *McCray v. Maryland*, 456 F.2d 1 (4th Cir. 1972) *Navarette v. Enomoto*, 536 F.2d 277 (9th Cir. 1976) In the Fifth Circuit, courts have suggested that the right of access is a privilege and immunity of citizenship protected by Article IV of the Constitution, by the First Amendment's right to petition, and by the due process clause. *Ryland v. Shapiro*, 708 F.2d 967 (5th Cir. 1983) According to the 7th Circuit, however, a challenge to alleged denials of court access can only be successful if there is a showing that the denials prevented petitioners from exercising their constitutional right to access to the courts. *Jones v. Franzen*, 697 F.2d 801 (7th Cir. 1983) Thus, the Catch-22 in this cause. The court itself acts as both mediator and adjudicator under *Shakman*. *Smith v. City of Chicago*, No. 84-2858 (7th Cir. 1985) In *Lucille v. City of Chicago*, the Seventh Circuit sits in its own case by first denying Petitioner access to judicial records of "back-up" tapes, and then refusing to set forth any reason why Petitioner

has or has not been denied access. *supra*, at 7. The *Shakman* decree as interpreted by the Seventh Circuit violates the checks and balances system upon which our government rests. The problem is exacerbated by the fact that the Seventh Circuit has ex-City of Chicago corporation counsel hearing and deciding cases for the City when they are under previous court order not to do so for conflict of interest reasons. *See Coclanes v. Sagun et al.*, No. 95 C 2269 (N.D.Ill. 1995) *Allen et al. v. City of Chicago*, 92 C 4122 (N.D. Ill.1992) (Aspen J.) App. at 34. Even the President of the United States had to give up the tapes when demanded. Are the courts above the law?

CONCLUSION

For the reasons set forth above, and in the honor of deceased Attorney Gordon Arnett of Chicago, who fought so hard for the release of the tapes demanded the day before his untimely death, the petition for a writ of certiorari should be granted. God is, in the name of Jesus. God save this Honorable Court.

Respectfully submitted,

DATED:

Feb. 9, 1996

John Lucille

John Lucille, pro se.

United States Court of Appeals *do*

For the Seventh Circuit
Chicago, Illinois 60604

August 28, 1995

Before

Hon. WILLIAM J. BAUER, *Circuit Judge*

JOHN LUCILLE, Plaintiff-Appellant,	] Appeal from the United] States District Court for] the Northern District of
No. 95-2109 v.	] Illinois, Eastern] Division.
CITY OF CHICAGO, an Illinois Municipal Corporation Defendant-Appellee.	]] No. 85 C 5956] John A. Nordberg,] Judge.]

Upon consideration of the **MOTION FOR COMPLETE RECORD (COMMON LAW WRIT OF MANDAMUS)** filed August 17, 1995, by pro se appellant,

IT IS ORDERED that the motion is **DENIED.**

APPENDIX A

FED. R. CIV. P. 60(b)

On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;
(2) newly discovered evidence which due diligence could not have discovered in time to move for a new trial under Rule 59(b);
(3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;
(4) the judgment is void;
(5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or
(6) any other reason justifying relief from the operation of judgment.

60(b) (Cont.)

The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order or proceeding was entered or taken. A motion under this subdivision 9(b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as provided in Title 28, U.S.C. Section 1655, or to set aside a judgment for fraud upon the court. Writs of corum nobis, corum vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

CIVIL DOCKET CONTINUATION SHEET

Plaintiff Defendant

Docket No. 85 C 5956

LUCILLE, John, et al CITY OF CHICAGO, et al

DATE	NR.	PROCEEDINGS
11/14/89	76	Filed 11/013/89:Plaintiff John Lucille's notice of filing;
FMP		Motion for new counsel or (Pro Se); (Attachments).
11/17/89	77	Minute Order of 11/16/89:Filed defendants' motion for ruling pursuant to Local Rule 12(p). Court grants Steven H. Sosman's oral motion to withdraw as counsel for plaintiff John Lucille. Court grants John Lucille leave to proceed to trial pro se. Court requires response to pending motions by November 24, 1989, 1989 and completed final pretrial order by November 27, 1989. All parties must be present at pre-trial conference. Any plaintiff failing to appear on November 30, 1989 will be dismissed for want of prosecution. Copy of this order is being mailed to John Lucille, 2741 W. Warren Blvd. Chicago 60612. Trial briefs may be filed by December 8, 1989. Pretrial conference set for Nov. 30, 1989 at 4:30 p.m. Nordberg, J. Mailed notice 11/17/89.

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JOHN LUCILLE, ORVILLE JONES and JAMES WHITE, Plaintiffs,	Docket No.85C5956
v.	Chicago, Illinois
	December 4, 1989
CITY OF CHICAGO, et al., Defendants,	5:00 o'clock p.m.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE JOHN A. NORDBERG

APPEARANCES:
For the Plaintiffs
Jones and White:
STEVEN H. SOSMAN & ASSOCIATES, by:
MR. STEVEN SOSMAN
(188 West Randolph Street
Suite 1200 Chicago, Illinois 60601)
For the Plaintiff
Lucille: MR. JOHN LUCILLE, pro se

For the Defendant:
MS. NANCY VAN ALLEN
MS. MARY SMITH
Assistant Corporation Counsel
(180 North LaSalle Street
Suite 1408
Chicago, Illinois 60601):

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JOHN LUCILLE, ORVILLE JONES and JAMES WHITE, Plaintiffs,	)	
v.	)	No. 85 C 5956
CITY OF CHICAGO, et al., Defendants,	)	

FINAL JUDGMENT ORDER

This cause comes to be heard for the entry of Judgment and Final Settlement in the above cause with all parties given notice and the Court fully advised in the premises;

IT IS HEREBY ORDERED:

1. That as the Plaintiff John Lucille has resolved his dispute with the Defendants, the City of Chicago, Charles Pounian, Eugene Barnes, William Sommerford and Lester Dickinson by way of Settlement Agreement, judgment is hereby entered in favor of the Plaintiff John Lucille and against the City of Chicago in the total of TWENTY ONE THOUSAND AND 00/100 DOLLARS ($21,000.00) as damages and not as back pay, and inclusive of all costs and attorneys' fees.

2. That the complaint is hereby dismissed against defendants Pounian, Barnes, Sommerford and Dickinson, with prejudice and that the judgment is to be paid by the City of Chicago.

3. That this Judgment Order is a Final Order, and is entered in accordance with the Settlement Agreement which has been signed by all parties or the authorized representatives and filed with the Court.

4. That the City's obligations pursuant to this Final order shall be completed within sixty days of the receipt by the Defendants' counsel of a copy of the entry of the Judgment.

5. That judgment is entered against the City of Chicago and in favor of attorney Steven H. Sosman in the total amount of FOUR THOUSAND AND 00/100 ($4,000.00).

6. That on or before January 16, 1990, or upon receipt by defendants' counsel of a copy of this Judgment Order, whichever occurs last, John Lucille shall be further

afforded career service upon reinstatement to that position.

Dated: Jan. 18, 1990

Honorable Judge Nordberg

Steven H. Sosman
Attorney for John Lucille
7 South Dearborn
Suite 1318
Chicago, Illinois 60603
641-3755

CIVIL DOCKET CONTINUATION SHEET

Plaintiff / Defendant

Docket No. 85 C 5956

LUCILLE, John, et al CITY OF CHICAGO, et al

DATE	NR.	PROCEEDINGS
01/22/90	91	Minute order of 01/18/90:Judgment is entered as follows: Court accepts settlement agreement dismissing all claims against defendants Pounian, Barnes, Sommerford, and Dickinson with prejudice and that the judgment is to be paid by the City of Chicago. Judgment is entered in favor of plaintiff John Lucille and against City of Chicago in the amount of $21,000.00 which includes all costs and attorneys' fees. Status hearing held. (For further detail see order attached to the original minute order form.) Nordberg, J. Mailed notice 01/22/90.
	92	Entered 01/18/90: Final judgment order.
...		
08/10/93	98	Filed 08/10/93: Appearance of Gordon James Arnett for plaintiff John Lucille.

RECEIVED
SEP 08 1993
H. STUART CUNNINGHAM
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JOHN LUCILLE, et al.,	)	
Plaintiffs,	)	
v.	)	No. 85 C 5956
	)	
CITY OF CHICAGO, et al.,	)	JUDGE NORDBERG
Defendants,	)	

PLAINTIFF'S PRELIMINARY REPLY
TO PETITION TO ENFORCE SETTLEMENT

This is a preliminary reply, because an adequate Reply cannot be filed unless and until Plaintiff has been allowed to listen to and/or transcribe portions of the electronic recorder TAPE of the hearing in the judge's chambers which ultimately led to the Settlement Agreement in this case. In Defendant City's Reply, no reference is made to any caselaw, primarily because there never has been any case, except for the one for plaintiff's friend and co-worker in the Sewer Department -- no case which was not either terminated at the Summary Judgment stage or by settlement agreement. Therefore, no legal research is required of plaintiff for his Reply Memo,

The purpose of a Reply Memorandum is to reply to any issues or points raised in the Response. Here, Defendant City of Chicago contends--
"plaintiff shall be afforded seniority ... to July 16, 1980 and shall be afforded career service status" "and the City specifically disclaimed... any unlawful conduct against plaintiff (p.4)."

"In late 1992... the...General Assembly... provided for an Early Retirement Incentive Program..." "This Court can take judicial notice that the Fund... is a legal entity separate and distinct from the City of Chicago.

Defendant raises a crucial factual dispute in footnote #2, page 5. She argues that she "had no knowledge or information ... that plaintiff withdrew approximately $48,000 from the Fund subsequent to his" [rest of footnote missing, so we can't tell what else Attorney Mary L. Smith is trying to state.]

Then, when their memo continues with a reference to what Mr. Lucille may have understood during negotiations as to the "right to elect early retirement" requires the parties and their attorneys to listen to the electronic TAPE made by the court reporter. This is the only sure and binding way to learn what was actually discussed.

Plaintiff plans to file tomorrow (9/9/93) a Motion to Listen to Tape, after which he will seek leave to file a Supplemental Reply Memorandum.

Gordon James Arnett

GORDON JAMES ARNETT
Attorney for Plaintiff
5865 N. Lincoln Ave., #112
Chicago 60659
334-0400

RECEIVED
NOV 24 1989
H. STUART CUNNINGHAM
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

John Lucille, et. al., Plaintiffs,	)	
v.	)	No. 85 C 5956
CITY OF CHICAGO, et al., Defendants,	)	Judge Nordberg

PLAINTIFF NOTICE TO STRIKE
AND DISMISS - MOTION IN LIMINE

Plaintiff, by his (Pro Se) counsel John Lucille move to strike and dismiss all Motions-in-Limine. ...

To strike motion in Limine Plaintiff states as follows: ...

84 C 9978 - II Plaintiff need order From Court to Hear Voice Tape From Wzorek Trial.

RECEIVED
SEP 6 1994
H. STUART CUNNINGHAM
UNITED STATES DISTRICT COURT

RECEIVED
APR 20 1994
H. STUART CUNNINGHAM
UNITED STATES DISTRICT COURT

On June 15th and June 29, 1984 Mayor Washington fired workers in violation of the Shakman Decree. The 27th Ward was half of the firing. There are 50 wards, how can one ward be half of the firing? Six out of seven supervisors were from the 27th ward. Tony of the 47th ward went back to work, that means 6 out of 6 were from the 27th ward. When workers filed law suits the city knew it was wrong. The Corporation Counsel took over and the big cover-up started. We checked with counsels in other placed and they said the people who changed the trial transcripts had to be crazy. They went to far when they took some of my testimony out, they forgot who I am. My testimony was over half Shakman. They will not get away with it. I have copies of everything. I pray for you to have the wisdom of King Solomon.

Dated at Chicago Illinois this 24 day of November 1989

Respectively Submitted

_____

John Lucille
Pro SE Counsel

2741 West Warren
Chicago, Illinois
(312) 826-7264

Petitioner's Certified Affidavit

I, John Lucille, certify and declare pursuant to 28 U.S.C. Section 1746 as follows:

1. **That I am an adult, and competent to testify to the following in a court of law.**
2. **That I have continually requested "back-up" tapes from the lower district court and the Seventh Circuit appellate court through my own motions and through my attorneys, but have been denied the same.**
3. **That upon information and belief, Gordon James Arnett, my attorney, died by way of a defective kidney dialysis machine (9/9/93), the day after he made known his intention to request the tapes which would show fraud upon the court in 85 C 5956 (N.D.Ill.E.D.)**
4. **That numerous threats and attempts on my life have taken place for appealing the fraudulent judgments entered against me all because City of Chicago does not want to pay what it owes to hundreds of present and former employees unlawfully fired.**

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on Feb. 9, 1996

John Lucille

John Lucille, Pro Se

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JOHN LUCILLE, et al.	)	No.85 C 5956
	)	
Plaintiffs,	)	
v.	)	Chicago, Illinois
	)	January 11, 1990
CITY OF CHICAGO, et al.,	)	9:30 a.m.
Defendants,	)	

TRANSCRIPT OF PROCEEDINGS - MOTION
BEFORE THE HONORABLE JOHN A. NORDBERG

APPEARANCES:

For the Plaintiffs:

STEVEN H. SOSMAN & ASSOCIATES, by:
MR. STEVEN SOSMAN
(188 West Randolph Street
Suite 1200 Chicago, Illinois 60601)

For the Defendant:
MS. NANCY VAN ALLEN
Assistant Corporation Counsel
Labor Division
30 North LaSalle Street Suite 1020
Suite 1408
Chicago, Illinois 60602):

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

H. Stuart Cunningham
CLERK

Office of the Clerk

John Lucille
2741 W. Warren Blvd.
Chicago, IL 60612

Case Number 1:85-cv-05956
Title: Lucille v. Chgo, Cty of
Assigned Judge: Honorable John A. Nordberg

MINUTE ORDER of 4/27/95 by Hon. John A. Nordberg: Granting plaintiff John Lucille's motion to set a ruling date [152-1]. Plaintiff's motion to reconsider the 8/25/94 dismissal of his 4/20/94 joint petition to modify and supplemental petition for rule [141-1] is denied for the reasons set forth at length in the defendant, City of Chicago's response to plaintiff's motion to reconsider. For the same reasons, the court denies plaintiff's motion to strike the City's "response" to his motion to reconsider [145-1] date stamped 11/10/95.* Judge Nordberg's has been the presiding judge throughout this case. Plaintiff's claims have no merit. Mailed notice

This docket entry was made by the Clerk on April 28, 1995

ATTENTION: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by ICMS, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

*Wrong date.

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

EUGENE WZOREK,	)No.84 C 9978
	)
Plaintiff,	)
v.	)Chicago, Illinois
	)July 23, 1992
CITY OF CHICAGO,	)9:30 a.m.
Defendant,	)

TRANSCRIPT OF PROCEEDINGS - MOTION
BEFORE THE HONORABLE BRIAN BARNETT DUFF

APPEARANCES:

For the Plaintiff:
MR. GORDON JAMES ARNETT
5865 North Lincoln Avenue, Suite 112
Chicago, Illinois 60659

For the Defendant:
MR. TERENCE J. MORAN
Assistant Corporation Counsel
Labor Division
180 North LaSalle Street Suite 1408
Chicago, Illinois 60601:

Now, before you say anything let me tell you that the transcripts in this case were certified and sent to the federal court of appeals, three, four years ago, and you have them, you can read them. There is no question that they are the transcripts. They have been verified by my court reporter, they have been used by both sides, they have been accepted as factual, and you have asked to refer to her tapes. Now, her tapes are only used so that she can verify her work. They are her personal property. You have no right to them, and she told you so. ...

...THE COURT: It is not a routine matter, Mr. Arnett. If I had to take every person's request for my court reporter's personal property, her tapes, which she uses only to be sure of her accuracy, and you know her skills with that machine, she does it only for her own benefit, she is paid for the machines, she is paid for the tapes, she uses them for her own use, and if you could get them, then everybody in the world could get them, and we would be playing them every night on Channel 7, Channel 5, on Channel 2, and Channel 9, and Channel 6 and Channel 32 whenever they wanted them. They are personal property, they are used as a tool just like a pencil, and I'm not going to make her give you her pencils. Okay?

CIVIL DOCKET CONTINUATION SHEET

Plaintiff Defendant

Docket No. 84 C 9978

WZOREK, Eugene CITY OF CHICAGO

DATE	NR.	PROCEEDINGS
92	207	Minute order of 07/23/92: Plaintiff's motion to produce the court reporter's electronic recording tapes is denied. Duff, J. Mailed notice.

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In the Matter of	)	
Michael L. Shakman and	)	
Paul M. Lurie, et al.	)	
v.	)	Civil Action
	)	No.69 C 2145
The Democratic Organization	)	
of Cook County, et al.,	)	

GENERAL ORDER

It appearing that:---
(a) on 16 May 1983 the Executive Committee entered an order in the above captioned cause...
(b) ...
(c) ...
(d) the matter of the assigment of the petitions arising out of 69 C 2145 was discussed by the Court at its meeting on 15 November 1984, therefore

By direction of the full Court met in executive session on Thursday, 15 November 1984,

IT IS HEREBY ORDERED ...

IT IS FURTHER ORDERED That any petitions alleging violations of or to enforce provisions of the judgments and decrees entered in 69 C 2145 reassigned to the initial calendar of Judge Rovner as being related to 69 C 2145 be reassigned by lot according to the rules, provided that no such petition shall be assigned to the calendar of the Honorable Marvin E. Aspen.

IT IS FURTHER ORDERED ....

ENTER:

FOR THE COURT

Frank McGarr
Chief Judge

Dated at Chicago, Illinois, this 19th day of November 1984.

IN THE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

HENRY ALLEN, et al)
)
v.) 92C4122
)
CITY OF CHICAGO, et al.)

JUDGE ASPEN
MAGISTRATE JUDGE LEFKOW

COMPLAINT

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS

Name of Assigned Judge **Marvin E. Aspen**
or Magistrate Judge

Case Number 94 C 3323 Date 16 Nov. 94

Case Title **William Coclanes v. Teresita B. Sagun et al.**

Enter Memorandum and Order: defendants' motion to dismiss (20-1) is granted in part and denied in part. Defendants' motion to strike (20-2) is denied as moot. Counts I and IV are dismissed for failure to state a claim, and the remainder of the complaint is dismissed without prejudice.

7 in contention for seat on federal bench

By JOHN FLYNN ROONEY
Law Bulletin staff writer

Illinois' two U.S. senators have received the names of seven finalists for a district court vacancy in Chicago from the merit commission appointed by the senators. The finalists include ... Chicago's corporation counsel and ...two lawyers in private practice... The finalists are said to be: ...Susan S. Sher, who heads the City of Chicago's Law Department; ... and Joseph M. Gagliardo, a partner at Laner, Muchin, ... Gagliardo, 42, a former first deputy Chicago corporation counsel, said Wednesday he was thrilled about his selection as a finalist. ... Sher has served as corporation counsel since April 1993, and as first assistant corporation counsel from May 1989 until her elevation. The 47-year-old also worked as an associate and partner at Mayer, Brown & Platt, and as an associate general counsel at the University of Chicago four years before joining the corporation counsel's office.

UNITED STATES DISTRICT COURT
EVERETT McKINLEY DIRKSEN BUILDING
UNITED STATES COURTHOUSE
CHICAGO 60604

H. STUART CUNNINGHAM
CLERK

OFFICE OF THE CLERK

June 29, 1995

Eugene Wzorek
4344 S. Honore St.
Chicago IL 60609

Dear Mr. Wzorek:

Re: 84 C 9978

We hereby acknowledge receipt of your letters dated June 24, 1995 addressed to H. Stuart Cunningham and Cheryl Young. In response to your request for copies of audio tapes "under the Freedom of Information Act 5 U.S.C. Section 552 of trial held before Judge Duff on June 29, 1988-June 30, 1988 and July 5, 1988 to July 6, 1988, please be advised. The U.S. District Court is exempt from the Freedom of Information Act. The court records are public records and may be copied for a fee.

In regards to audio tapes from trial, trials are covered

by court reporters, the court does not electronically record trials. if the court reporter chooses to use a tape recorder as backup for their own convenience, the tapes are the personal property of the court reporter and there is no public entitlement to these recordings, or to backup tapes made for the convenience of the court and not otherwise required by to 28 U.S.C. Sec. 753.

If you would like to request a copy of the transcripts you should forward your request to Lois LaCorte for the dates you have listed in your letter that she covered and for Delores Brennan you should forward your request to this office as she is no longer with the court. You will be given an estimate of the cost and the amount of the deposit required to prepare the transcript.

Sincerely,

A. Rister

Office of the Court Reporter Supervisor

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D.C. 20543

January 8, 1996

Mr. John Lucille
2741 W. Warren Boulevard
Chicago, IL 60612

Re: In Re John Lucille
No. 95-678

Dear Mr. Lucille:

The court today entered the following order in the above entitled case:

The petition for a writ of mandamus is denied.

Sincerely,
*
William K. Suter, Clerk

* (Letter was left unsigned)

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS

Name of Assigned Judge **John Nordberg**
or Magistrate Judge

Case Number 85 C 5956 Date August 25, 1994

Case Title **John Lucille et al. v. City of Chicago et al.**

MOTION:

Joint petition to modify the settlement agreement entered into in this case pursuant to this court's inherent equitable powers, and/or pursuant to Rule 60(b)(6) & (b)(7), and supplemental petition for rule to show cause.

DOCKET ENTRY:

(10) x Plaintiff's petition to modify the settlement agreement entered into this case pursuant to this Court's inherent equitable powers and/or pursuant to Rule 60(b)(6) and 60 (b)(7) and plaintiff's supplemental petition for rule to show cause are denied.

(11) x For further detail see x order on the reverse

Almost four years later, Plaintiff filed an Amended Petition to Enforce the Terms and Conditions of the Settlement Agreement. In the Petition Plaintiff implied that the Defendant had violated the Settlement Agreement by not reinstating Plaintiff with full seniority and benefits. This Court denied Plaintiff's Petition in a Memorandum Opinion and Order dated December 30, 1993. With regard to Plaintiff's request for (1) accumulated vacation time, compensation time, holiday time and sick time prior to Plaintiff's 1984 discharge and (2) vacation time which could have been accumulated from 1984 until 1990 had Plaintiff not been discharged, the Court held that the Settlement Agreement did not entitle Plaintiff to such benefits, and thus Defendant did not violate the terms of the Settlement by denying Plaintiff such benefits. (Memorandum Opinion and Order dated January 30, 1994 at 2-3.) The Court also determined that the Settlement Agreement did not entitle Plaintiff to reinbursement for the sum he withdrew from his pension fund ($47,725.23) after his discharge. Id. at 6.

The Court's December 30, 1993 Order was affirmed on appeal on August 3, 1994. *Lucille v. City of Chicago*, ---F.3d---, No. 94 C 1106, 1994 WL 400907 (7th Cir. Aug. 3, 1994). The Seventh Circuit considered only whether the Defendant had violated the terms of the settlement agreement set out in this Court's Janu-

ary 18, 1990 judgment because the Seventh circuit determined that violation of settlement terms not incorporated in the judgment did not activate this Court's ancillary jursidiction. The Seventh Circuit concluded that based on the settlement terms set out in the judgment, Defendant did not violate the settlement agreement by denying Plaintiff vacation and pension credits.

Relying on Rule 60(b)(6), Plaintiff's present motion requests the Court to modify the language of its final judgement entered in accordance with the settlement agreement signed by both parties. The modification sought by Plaintiff would require the Court to include a provision entitling Plaintiff to his accumulated vacation and pension benefits. Plaintiff asserts that such relief is justified under Rule 60(b)(6) because, at the time he signed the settlement agreement, he failed to notice that Defendant's counsel had allegedly fraudulently altered and omitted certain terms. (Plaintiff's Motion at par. 6.)

Resolution of an appeal of the judgment entered in a particular case does not divest the district court of jurisdiction to entertain a Rule 60(b) motion. *LSJL Partnership v. Frito-Lay, Inc.*, 920 F.2d 476 479 (7th Cir. 1990). Prior to 1976, most circuits required that the appellant obtain leave of the court of

appeals before filing a Rule 60(b) motion in a district court. Id. at 478. However, in *Standard Oil Company of California v. United States*, 429 U.S. 17 (1976), the Supreme court held that a district court may reopen a case which had been reviewed on appeal without leave from the court of appeals. *See also Landau & Cleary, Ltd. v. Hriber Trucking, Inc.*, 867 F.2d 996, 1001-02 (7th Cir. 1989).

Rule 60(b) requires a showing of exceptional circumstances or a grievous wrong evoked by new and unforseen conditions. *National Business Systems, Inc. v. AM International Inc.*, 607 F.Supp. 1251, 1252 (D.C.Ill. 1985) (citing *C.K.S. Engineers, Inc. v. White Mountain Gypsum Co.*, 726 F.2d 1202, 1204-05 (7th Cir.1984). The decision to grant relief under Rule 60(b) is left to the sound discretion of the trial court, and a review of a trial court's decision to grant or deny Rule 60(b) relief is subject to an abuse of discretion standard. *National Business Systems*, 607 F.Supp. at 1252 (citing *Inryco, Inc. v. Metropolitan Engineering Co.*, 708 F.2d 1225, 1230 (7th Cir.), *cert. denied*, 464 U.S. 937 (1983)). Federal Rule of 60(b) provides in relevant part:

> On motion and upon such terms as are just, the

> court may relieve a party... from a final judgement, order or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgement is void; (5) the judgement has been satisfied, released or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgement should have prospective application; or (6) any other reason justifying relief from the operation of judgement.

Fed. R. Civ. P. 60(b). The rule also provides that for subsections (1), (2) and (3), the motion for relief from judgement must be made not more than one year after the judgement was entered. *Id.* The first three subsections and the catchall subsection of Rule 60(b) are mutually exclusive. *Wesco Products Co. v. Alloy Automotive Co.*, 880 F.2d 981, 983 (7th Cir. 1989) "Thus if the asserted grounds for relief fall within the terms of the first three clauses of Rule 60(b), relief under the catchall provision is not available." *Id.* If the first three sub-

sections and the catchall subsection of Rule 60(b) were not mutually exclusive, the one year time limit applicable to the first three subsections would be meaningless because relief could always be sought under the sixth subsection. *Id.*

Although Plaintiff brings his Motion for Relief from Judgement pursuant to Rule 60(b)(6), the Court finds that Plaintiff's allegations more appropriately fall within subsection (1) or (3) of Rule 60(b). Plaintiff alleges that he mistakenly believed that the settlement agreement granted him vacation and pension benefits which it did not actually confer. Plaintiff also states that Defendant's counsel fraudulently omitted and altered certain terms without notifying the Plaintiff of such omissions and alterations before Plaintiff sined the settlement agreement. As Plaintiff's allegations fall within subsections one and three of Rule 60(b), Plaintiff cannot take advantage of Rule 60(b)'s catchall provision with the hope of avoiding the one year time limitation.

Plaintiff's Motion for Relief from Judgement was not brought within one year of the January 18, 1990 Order. As the one year time limit is jurisdictional and mat not be extended, this Court lacks jurisdiction to consider Plaintiff's Supplemental Petition for Rule to Show Cause addressing allegedly new violations of the Shakman decree which occurred after the final judgement was entered in this case.

Accordingly, Plaintiff's Petition to Modify the Settlement Agreement entered into in this cause pursuant to this Court's inherent equitable powers and/or pursuant to Rule 60(b)(6) and 60(b)(7) and Plaintiff's Supplemental Petition for Rule to Show Cause are denied.

United States Court of Appeals

For The Seventh Circuit

Chicago, Illinois 60604

October 13, 1995.

Before

Hon. RICHARD D. CUDAHY, Circuit Judge
Hon. JOEL M. FLAUM, Circuit Judge
Hon. FRANK H. EASTERBROOK, Circuit Judge

JOHN LUCILLE, *Plaintiff-Appellant*,	) Appeal from the United States District Court for the Northern
No. 95-2109 v.	) District of Illinois, Eastern Division.
CITY OF CHICAGO, et al., *Defendants-Appellees.*	) No. 85 C 5956 John A. Nordberg, *Judge*.

Order

Lucille filed this case in 1985 and settled it in 1989. In 1993 he asked the district court to "enforce" his understanding of the settlement--which we held the court lacked authority to do, because not all terms of the settlement appeared in the judgment. 31 F.3d 546 (1994). The court's power is limited to enforcing the terms of the judgment.

While the appeal was pending, Lucille asked the district court to revise the settlement agreement under Fed. R. Civ. P. 60(b)(6) to add terms to that agreement, increasing the benefits to which he is entitled. The district court declined, observing that the rationale for the belated action--that one of the City's attorneys defrauded him in discussing the effects of the settlement--is covered by Rule 60(b)(3), which has a one-year time limit. This limit cannot be evaded by resorting to Rule 60(b)(6). *See Wesco*

Products Co. v. Alloy Automotive Co., 880 F.2d 981, 983 (7th Cir. 1989). Moreover, for the reasons in our original opinion, the district court is not authorized to tinker with the settlement agreement itself; its power under Rule 60(b) is to modify the judgment, but Lucille did not argue that there was any flaw in that judgment. He also did not file an appeal. Instead, approximately 40 days later, he accused his own former attorney of fraud, this time suggesting that the fraud may have affected

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* An earlier appeal in this case was orally argued on July 7, 1994. The successive appeal has been assigned to the same panel, which is unanimously of the view that another oral argument is unnecessary.

the terms of the judgment. Although styled as a motion for reconsideration, it was untimely under Fed. R. Civ. P. 59; thus it had to be a successive request for relief under rule 60(b), which the district court denied.

Now Lucille has appealed and attempts to argue the merits of the first Rule 60(b) decision. But it is too late to challenge this; the only question properly before us is whether the district court abused its discretion in not granting relief, under Rule 60(b), from the original Rule 60(b) decision. It should go without saying that a succession of Rule 60(b) motions does not extend the time for appeal; and as the district court pointed out, the original motion was several years too late. This extended case, growing out of events in 1984, was brought to a close by our decision last year, and the district court did not abuse its discretion in declining to reopen the dispute.

AFFIRMED

United States Court of Appeals

For The Seventh Circuit
Chicago, Illinois 60604

November 15, 1995.

Before

Hon. RICHARD D. CUDAHY, Circuit Judge
Hon. JOEL M. FLAUM, Circuit Judge
Hon. FRANK H. EASTERBROOK, Circuit Judge

JOHN LUCILLE, *Plaintiff-Appellant*,	) Appeal from the United States District Court for the Northern
No. 95-2109 v.	) District of Illinois, Eastern Division.
CITY OF CHICAGO, et al., *Defendants-Appellees.*	) No. 85 C 5956 John A. Nordberg, *Judge*.

Order

Plaintiff-appellant filed a petition for rehearing and suggestion of rehearing en banc on October 23, 1995. No judge in regular active service has requested a vote on the suggestion of rehearing en banc, and all of the judges on the panel have voted to deny rehearing. The petition for rehearing is therefore DENIED.